

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 29 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FINN MACCOOL,

Plaintiff - Appellant,

v.

DORA B. SCHRIRO; DONNA
CLEMENT, Administrator, Offender
Services Bureau, Central Office; RICK
WARD, Deputy Administrator, Central
Office, sued in their individuals and
official capacities,

Defendants - Appellees.

No. 06-15492

D.C. No. CV-03-00766-DGC

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
David G. Campbell, District Judge, Presiding

Argued and Submitted May 13, 2008
San Francisco, California

^{*} This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Before: B. FLETCHER and RYMER, Circuit Judges, and DUFFY **, Senior District Judge.

Finn MacCool appeals summary judgment entered in favor of Arizona Department of Corrections officials Dora Shriro, Donna Clement, and Rick Ward (ADC officials) in his action under 42 U.S.C. § 1983 for injunctive relief. We affirm.

To the extent that MacCool's claims arise out of either his validation as a member of the Aryan Brotherhood on October 10, 1997, or his transfer to New Jersey on April 5, 1999, they are barred by the two-year statute of limitations applicable in Arizona. A.R.S. § 12-542(1). His theory of a continuing violation does not save these claims, as both were discrete acts that occurred outside the timely filing period. *See Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002); *Carpinteria Valley Farms, Ltd. v. County of Santa Barbara*, 344 F.3d 822, 828 (9th Cir. 2003).

In any event, the conditions of confinement about which MacCool complains are not atypical, nor does he have a protected interest in avoiding interstate transfer. *See Sandin v. Conner*, 515 U.S. 472, 483 n.5 (1995); *Olim v.*

** The Honorable Kevin Thomas Duffy, Senior United States District Judge for the Southern District of New York, sitting by designation.

Wakinekona, 461 U.S. 238, 248–49 (1983). That incarceration in New Jersey may, as a practical matter, prevent his family from visiting does not offend either due process or the Eighth Amendment. *See Overton v. Bazzetta*, 539 U.S. 126, 135–37 (2003). MacCool has visitation rights as well as alternative means of communication. *Id.* at 135. Finally, there is no basis in the record for concluding that ADC officials put MacCool in harm’s way such that the principles of *Farmer v. Brennan*, 511 U.S. 825, 832 (1994), would be offended.¹

As no exceptional circumstances are shown, the district court did not abuse its discretion in denying MacCool’s request for counsel. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). Likewise, the court had discretion to decline oral argument. *Jasinski v. Showboat Operating Co.*, 644 F.2d 1277, 1281 n.4 (9th Cir. 1981).

AFFIRMED.

¹ MacCool’s retaliation claim is barred because his ineligibility for a compassionate transfer back to Arizona is the result of his validation. *See* Ariz. Dep’t of Corr. Order 1004.04, para. 1.2.2 (June 21, 2002).